



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/173200

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2016, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on May 12, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency denied petitioner's eligibility for MA for November 2015 due to excess assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], ESS

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner applied for MA on November 30, 2015. The agency thereafter completed an asset assessment and determined that her asset limit was \$52,000.
3. Petitioner had available assets in excess of \$52,000 in November 2015.
4. After all verifications were received on this case, the agency issued a notice of decision to petitioner stating that effective December 2015, she was eligible for MA. It also stated that she was not eligible in November 2015 because she was over the asset limit. Exhibit A.

DISCUSSION

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. See *Medicaid Eligibility Handbook (MEH)*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. An individual is financially eligible for EBD-MA if the total value of all non-exempt liquid assets does not exceed \$2,000. Wis. Stats. §49.47(4)(b). The clear, unambiguous language of both Wis. Stat. §49.47(4)(b), and Wis. Admin. Code §DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until the actual date an individual's liquid assets fall below \$2,000, an individual is ineligible for MA.

The community spouse asset share (CSAS) is the amount of countable assets greater than \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person applies for MA. In this case, the asset limit of \$52,000 was based on the Medicaid Eligibility Handbook, §18.4.3, which is based upon Wis. Stat. §49.455(6)(b). This includes the \$2,000 that is added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As part of the eligibility determination, the agency is required to take into account certain assets owned by the petitioner. *MEH*, §16.1. There was no dispute that the life insurance policies were assets owned by petitioner, and that their value would put her over the asset limit for November. The petitioner's husband testified at hearing that he had requested that the insurance company expedite the liquidation of one policy in particular (AIG/valued at \$24,896.19) on November 16. Unfortunately, the insurance company did not do so in enough time for petitioner to receive the check and spend down the asset in November.

While I certainly understand that the timing of these events has caused difficulty for petitioner's husband, I do not have the authority to change the result based on fairness. The language of the law is clear that eligibility cannot exist prior to the date on which all eligibility requirements are met, and petitioner had available assets in excess of the \$52,000 limit for November. I add, assuming he finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. As such, I must find that the agency acted correctly in denying the application for November due to excess assets.

I add that the agency testified at hearing that any nursing home liability for the month of November could be used as a medical expense, which would reduce her patient liability for as many months needed to pay off the nursing home bill.

CONCLUSIONS OF LAW

The agency correctly denied MA for petitioner for November 2015 due to excess assets.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of May, 2016

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 24, 2016.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability